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Attorneys for Plaintiff  
TAYLOR THOMSON

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Taylor Thomson

Plaintiff,

v.

Persistence Technologies BVI Pte Ltd., Tushar  
Aggarwal, Ashley Richardson,

Defendants.

Case No. 2:23-cv-04669-MEMF-MAR

**PLAINTIFF TAYLOR THOMSON'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF MOTION  
TO DISMISS DEFENDANT ASHLEY  
RICHARDSON'S AMENDED  
COUNTERCLAIMS**

The Honorable Maame Ewusi-Mensah  
Frimpong, United States District Judge

Date: May 30, 2024

Time: 10:00 a.m.

Courtroom: 8B

**PRELIMINARY STATEMENT**

In response to Plaintiff Taylor Thomson’s Motion to Dismiss Defendant Ashley Richardson’s original “Counterclaim,” Ms. Richardson filed an “Amended Counterclaim” asserting that Ms. Thomson made “defamatory lies about [Ms.] Richardson” and accuses Ms. Thomson of “In[t]entional Infliction of Emotional Distress.” The Amended Counterclaim, despite being longer, does not in any way remedy the issues that rendered Ms. Richardson’s original “Counterclaim” fatal. In her Amended Counterclaim, Ms. Richardson simply recites the legal elements of defamation and intentional infliction of emotional distress (“IIED”) claims and pairs them with vague and conclusory assertions about the purported harm she suffered at the hands of Ms. Thomson’s alleged misconduct. Ms. Richardson does not do anything that she needs to do to make out a claim of defamation or IIED – she does not cite to any specific defamatory statements; she does not allege how or why any of the unalleged statements would be defamatory. Nor does Ms. Richardson allege conduct that is extreme and outrageous; she does not provide any evidence that Ms. Thomson intended to cause her emotional distress; and she does not provide any evidence of severe or extreme emotional distress beyond non-specific terms such as “mental and physical breakdown.” Lastly, Ms. Richardson fails to demonstrate that any conduct by Ms. Thomson actually and proximately caused Ms. Richardson’s distress. Anything else that has been added in Ms. Richardson’s Amended Counterclaim that might arguably be considered a fact is too vague or irrelevant to make out a cognizable legal claim. For example, Ms. Richardson makes wholly conclusory allegations that Ms. Thomson made “defamatory lies” to “certain individuals,” but does not identify any specific “lie” or any “individual,” much less when and where the “lie” took place or why it would be considered defamatory. She also includes irrelevant allegations about Ms. Thomson’s purported conduct towards people other than Ms. Richardson.

Federal Rule of Civil Procedure (“Rule”) 8(a)(2) requires a pleading to contain enough detail to provide a counterclaim Defendant with “fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation and quotation marks omitted). Here, Ms. Richardson’s Amended Counterclaim continues to suffer from a severe lack of any factual details to support the exorbitant damages assertions contained in her Amended

Counterclaim.<sup>1</sup> The Amended Counterclaim falls short of even the most lenient pleading standards that could potentially be applied by this Court. Because Ms. Richardson’s Amended Counterclaim fails to provide Ms. Thomson fair notice of any counterclaim for relief, all aspects of this Amended Counterclaim should be dismissed as insufficiently pleaded under Rule 8.

### FACTUAL BACKGROUND

On June 13, 2023, Plaintiff Taylor Thomson commenced this action against Defendants Persistence Technologies (BVI) Pte Ltd. (“Persistence”), Tushar Aggarwal, and Ashley Richardson. (ECF No. 1.) Ms. Thomson filed the First Amended Complaint on September 23, 2023 (ECF No. 25) (the “Amended Complaint”), which was ultimately served on Ms. Richardson. On December 22, 2023, Ms. Richardson filed her Answer to the Amended Complaint. (ECF No. 48 (the “Answer”).) Ms. Richardson purports to be appearing in this action *pro se*, but she has very experienced counsel advising her. That counsel has appeared on numerous telephone calls and email exchanges with the undersigned in relation to this matter.<sup>2</sup>

In her Answer, Ms. Richardson asserted a “Counterclaim” against Ms. Thomson. (Answer at 13:13-28.) Ms. Richardson’s “Counterclaim” consisted of three short paragraphs consisting of vague and conclusory assertions about the purported damages that Ms. Richardson believes she has incurred. (*Id.*) Ms. Richardson’s “Counterclaim” did not include any cognizable causes of action against Ms. Thomson. (*Id.*)

Ms. Thomson moved to dismiss Ms. Richardson’s “Counterclaim” on January 12, 2024. (ECF No. 50.) On February 2, 2024, Ms. Richardson submitted an Amended Counterclaim (ECF No. 58.) (the “Amended Counterclaim”) and an untimely opposition to Ms. Thomson’s Motion to Dismiss.<sup>3</sup> In the Amended Counterclaim, Ms. Richardson vaguely alleges that Ms. Thomson made “defamatory

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<sup>1</sup> Ms. Richardson requests \$5 million dollars in general and special damages, and \$10 million dollars in compensatory damages, but fails to provide any support for these extreme figures.

<sup>2</sup> It should be noted that Ms. Richardson’s prior counsel, while stating that he is not officially counsel to Ms. Richardson, continues to advise her, and has corresponded with the undersigned and has appeared on conference calls with the undersigned and Ms. Richardson in reference to this matter. If the Court is inclined to consider Ms. Richardson’s assertion that she is proceeding *pro se*, Plaintiff requests a hearing on the matter.

<sup>3</sup> As discussed in Ms. Thomson’s Reply to Ms. Richardson’s Opposition (ECF No. 60), Ms. Richardson’s Amended Counterclaim mooted Ms. Thomson’s Motion to Dismiss, but, to the extent that it didn’t, Ms. Richardson’s Opposition was not timely filed and did not address any argument made in Ms. Thomson’s Motion to Dismiss.

1 lies about [Ms.] Richardson” without specifying any particular statements or alleging why such  
2 statements are defamatory, and accuses Ms. Thomson generally of “In[t]entional Infliction of  
3 Emotional Distress.” (Amended Counterclaim at 1:23-5:17.)

4 Ms. Richardson alleges that Ms. Thomson “made statements to certain individuals in the Film  
5 and Television industry that [Ms.] Richardson had committed fraud and theft with respect to  
6 cryptocurrency.” (*Id.* at 1:24-26.) Ms. Richardson further alleges that Ms. Thomson made these same  
7 statements to “individuals within [Ms.] Richardson’s and [Ms.] Thomson’s shared social circle” and  
8 to “individuals within the C[ry]ptocurrency and Financial sectors.” (*Id.* at 2:1-7.) Ms. Richardson  
9 does not identify what Ms. Thomson actually said in any of these supposedly defamatory statements,  
10 or who these “certain individuals” are or when and where Ms. Thomson allegedly made the  
11 statements. (*See id.* at 1:24-2:7.) The remainder of the “defamatory lies” section of Ms. Richardson’s  
12 Amended Counterclaim contains only conclusory allegations about how the purported falsity of these  
13 unnamed statements and the purported harm Ms. Richardson suffered from these unnamed  
14 “defamatory lies.” (*Id.* at 2:9-3:9.) Ms. Richardson does not explain how or why Ms. Thomson’s  
15 “defamatory lies” are false, how or why Ms. Thomson knowingly made these statements with an  
16 intent to harm her, or how or why Ms. Richardson was damaged. (*See id.*)

17 Ms. Richardson’s Amended Counterclaim is also replete with extraneous and egregious  
18 falsehoods about Ms. Thomson that are alleged in connection with Ms. Richardson’s vague  
19 allegations of “In[t]entional Infliction of Emotional Distress.” (*Id.* at 3:12-5:17.) Ms. Richardson  
20 falsely, and vaguely, alleges that Ms. Thomson has a history of engaging in defamatory and illegal  
21 conduct towards members of her own staff through purportedly false allegations of “theft and  
22 extreme negligence” and for the mismanagement of Ms. Thomson’s finances. (*Id.* at 3:14-26.) But  
23 Ms. Richardson does not cite even a single specific example to support her allegations. Ms.  
24 Richardson vaguely alleges that Ms. Thomson causes her “severe emotional distress” for the  
25 “pressure [she] placed on [Ms.] Richardson” to make successful cryptocurrency trades on Ms.  
26 Thomson’s behalf. (*Id.* 4:1-5:17.)

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**ARGUMENT**

**I. LEGAL STANDARD**

To survive a motion to dismiss for failure to state a counterclaim under Rule 12(b)(6), Ms. Richardson must plead sufficient factual matter that supports each of her counterclaims for relief on their face. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Twombly*, 550 U.S. at 555. Specifically, Rule 8(a)(2) requires that a pleading stating a claim for relief contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” *See* Fed. R. Civ. P. 8(a)(2). The purpose of Rule 8(a)(2)’s pleading requirement is to “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Twombly*, 550 U.S. at 555 (citation omitted).

“While a [pleading] attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level.” *Id.* (citations omitted). When a plaintiff fails to meet this standard, dismissal under Rule 12(b)(6) for failure to state a claim upon which relief can be granted is appropriate. *See Iqbal*, 556 U.S. at 678-79.

**II. MS. RICHARDSON’S AMENDED COUNTERCLAIM DOES NOT PLEAD FACTUAL ALLEGATIONS SUFFICIENT TO STATE ANY PLAUSIBLE COUNTERCLAIM FOR RELIEF**

The Ninth Circuit has held that “a complaint must ‘contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively.’” *Ramirez v. Nationstar Mortg. LLC*, 2013 WL 1941787, at \*1 (C.D. Cal. May 8, 2013) (quoting *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011)). For example, claims that “consist[] merely of recitations of legal elements and conclusory statements. . . . d[o] not give notice to [a counterclaim defendant] ‘the grounds upon which [the counterclaim] rests.’” *De Los Reyes v. Sw. Gas Corp.*, 319 F. App’x 639, 641 (9th Cir. 2009) (quoting *Twombly*, 550 U.S. at 555).

Furthermore, claims that are “difficult to decipher” and “bear[] no connection to the specific allegations involving” the parties are “insufficient under Rule 8 and fail[] to state a claim under Rule

1 12(b)(6).” *Ramirez*, 2013 WL 1941787, at \*1-2 (finding that Plaintiff failed to “coherently allege  
2 facts on which he might be entitled to relief”). This is the case even for claims asserted by *pro se*  
3 litigants. *See, e.g., Bonilla v. Nationstar Mortg., LLC*, 2017 WL 10433720, at \*3 (C.D. Cal. Oct. 24,  
4 2017) (dismissing a *pro se* plaintiff’s complaint where his complaint was “scant at best” and provided  
5 “no factual allegations to support his claim.”); *Ward v. Wells Fargo Home Mortg.*, 2014 WL  
6 1922082, at \*4, 14 (N.D. Cal. May 6, 2014) (dismissing *pro se* plaintiff’s complaint “in its entirety”  
7 where her claims “were not definite enough to raise a right to relief above the speculative level”)  
8 (citation and internal quotation marks omitted).

9 Here, Ms. Richardson’s Amended Counterclaim also falls well short of Rule 8’s pleading  
10 standard. Claims consisting “merely of recitations of legal elements and conclusory statements” are  
11 insufficient. *De Los Reyes*, 319 F. App’x at 641. Ms. Richardson’s Amended Counterclaim is  
12 replete with recitations of legal elements and conclusory statements that she clearly copied from Ms.  
13 Thomson’s original Motion to Dismiss. For example, Ms. Richardson claims generally that  
14 Ms. Thomson depicted Ms. Richardson as a fraudster and a thief “knowing the depiction was  
15 false, or without any reasonable grounds for believing it to be true.” (Amended Counterclaim  
16 at 2:15-20.) But Ms. Richardson does not cite to any specific statement by Ms. Thomson,  
17 allege a date on which the purported statement was made, or allege to whom the purported  
18 statement was made. Ms. Richardson fails to specify how Ms. Thomson knew this “depiction was  
19 false” or how Ms. Thomson failed to have “any reasonable grounds for believing it to be true.” (*Id.*)  
20 Anything added into Ms. Richardson’s Amended Counterclaim that could be construed as a fact is  
21 irrelevant to her defamation and IIED claims. For example, Ms. Richardson falsely alleges that  
22 Ms. Thomson engaged in defamatory and illegal conduct towards people other than Ms.  
23 Richardson (*id.* at 3:14-26), which is not relevant to Ms. Richardson’s asserted claims that Ms.  
24 Thomson defamed or inflicted emotional distress on her. Thus, Ms. Richardson’s Amended  
25 Counterclaim is no different than her Counterclaim in that it is simply a general demand for  
26 unspecified damages with conclusory recitations of legal elements and irrelevant facts.

27 The lack of any relevant factual details to support any assertions in Ms. Richardson’s  
28 Amended Counterclaim fall short of even the most lenient pleading standards that could potentially

1 be applied by this Court. *See Yovev v. USA-Stat Dep't Health Hum. Serv. Dep't*, 2007 WL 9711575,  
2 at \*1–2 (C.D. Cal. July 23, 2007) (finding that, although the court’s standard was more lenient for  
3 *pro se* plaintiffs, defendant’s motion to dismiss should be granted where “[p]laintiff has not alleged  
4 any specific allegations of wrongdoing . . . and has not stated the statutory authority for a lawsuit  
5 against the state.”). For these reasons, Ms. Richardson’s Amended Counterclaim fails to provide Ms.  
6 Thomson fair notice of any counter claim for relief, and all aspects of the Amended Counterclaim  
7 should be dismissed as insufficiently plead under Rule 8. *Ramirez*, 2013 WL 1941787, at \*1-2.<sup>4</sup>

8  
9 **III. MS. RICHARDSON’S CLAIMS FOR DEFAMATION AND INTENTIONAL**  
10 **INFLECTION OF EMOTIONAL DISTRESS SHOULD BE DISMISSED WITH**  
11 **PREJUDICE BECAUSE THEY CANNOT BE CURED BY FURTHER**  
12 **AMENDMENT**

13 A claim that is “based on a fundamental misunderstanding of the law” must be dismissed  
14 with prejudice because “it cannot be cured by amendment.” *Ward*, 2014 WL 1922082, at \*5, 7, 14  
15 (dismissing certain claims by a *pro se* litigant without leave to amend where amendment would be  
16 futile). To the extent that Ms. Richardson’s Amended Counterclaim can be construed as distinct  
17 counterclaims of defamation or intentional infliction of emotional distress, Ms. Richardson has failed  
18 to state any of these claims, and the opportunity to amend is futile for the following reasons.

19 **A. Ms. Richardson Has Failed to Plead a Defamation Claim**

20 “The elements of a defamation claim are (1) a publication that is (2) false, (3) defamatory,  
21 (4) unprivileged, and (5) has a natural tendency to injure or causes special damage.” *Marschall v.*  
22 *Caine & Weiner Co.*, 2011 WL 2516502, at \*3 (C.D. Cal. June 23, 2011). A pleading fails to state  
23 sufficient facts to constitute a claim of defamation where, as here, the pleadings use conclusory  
24 language, “fail[] to identify the defamation remark, note the publication, or plead specific damages.”  
25 *Id.* at 4. Here, Ms. Richardson vaguely alleges that Ms. Thomson “made statements . . . that [Ms.]  
26 Richardson had committed fraud and theft” to “certain individuals.” (Amended Counterclaim at 1:24-  
27 26, 2:1-7.) Ms. Richardson does not identify the actual substance of any such “statements,” who the

28 <sup>4</sup> As discussed herein, Plaintiff attempts to construe the possible legal claims that Ms. Richardson could be asserting to  
the best of her ability, however, to the extent Ms. Richardson has attempted to assert additional legal claims against Ms.  
Thomson, Ms. Thomson reserves the right to oppose and fully brief for the Court any claims she was unable to decipher.



1 “certain individuals” these statements were made to are, and when and where these “statements”  
2 were made. (*Id.*) Additionally, aside from conclusory assertions about injury “to her professional  
3 reputation,” Ms. Richardson fails to allege how she was specifically damaged by Ms. Thomson’s  
4 purported “defamatory lies.” (*Id.* at 2:23-26.) Thus, any claim for defamation asserted in the  
5 Amended Counterclaim against Ms. Thomson must be dismissed for failure to put Ms. Thomson on  
6 “fair notice” of “what the . . . claim is and the grounds upon which it rests.” *Marschall*, 2011 WL  
7 2516502, at \*4 (quoting *Twombly*, 550 U.S. at 555).

8 To the extent Ms. Richardson is referring to statements made in the Complaint and the  
9 Amended Complaint filed against her, any claims of “fraud and theft” made against Ms. Richardson  
10 in this lawsuit are protected by California’s litigation privilege. (Amended Counterclaim at 1:24-26,  
11 2:1-7); *Johnson v. Lucent-Alcatel*, 2019 WL 4391121, at \*2 (C.D. Cal. July 24, 2019) (citing Cal.  
12 Civ. Code § 47(b) (“A privileged publication . . . is one made . . . [i]n any . . . judicial proceeding”);  
13 *Johnson v. JP Morgan Chase Bank DBA Chase Manhattan*, 536 F. Supp. 2d 1207, 1212–13 (E.D.  
14 Cal. 2008) (applying the litigation privilege in the context of a defamation claim). Therefore, Ms.  
15 Richardson’s defamation claim against Ms. Thomson should be dismissed with prejudice.

16 **B. Any Intentional Infliction of Emotional Distress Claim Asserted by Ms.**  
17 **Richardson Fails Because Ms. Richardson Cannot Allege Extreme and**  
18 **Outrageous Conduct**

19 “In order to state a claim for intentional infliction of emotional distress, a plaintiff must allege  
20 facts demonstrating: (1) extreme and outrageous conduct by the defendant with the intention of  
21 causing or reckless disregard of the probability of causing, emotional distress; (2) that the plaintiff  
22 suffered severe or extreme emotional distress; and (3) that the outrageous conduct actually and  
23 proximately caused the distress.” *Pestmaster Servs., Inc. v. Travelers Cas. & Sur. Co. of Am.*, 2013  
24 WL 12147583, at \*3 (C.D. Cal. Sept. 10, 2013). To satisfy the extreme and outrageous conduct  
25 element, a defendant’s conduct “must be so outrageous in character, and so extreme in degree, as to  
26 go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in  
27 a civilized community,” and “[s]evere emotional distress’ means emotional distress of such  
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1 substantial quality or enduring quality that no reasonable [person] in civilized society should be  
2 expected to endure it.” *Id.* (citation and internal quotations omitted).

3 Here, Ms. Richardson has not articulated any specific statement or act made by Ms. Thomson,  
4 and so cannot possibly make out that any act would reach the level of outrageousness “to go beyond  
5 all possible bounds of decency” or how Ms. Richardson has incurred “severe emotional distress”  
6 because of such unnamed statements of the substantial quality required under California law. (*Id.*)  
7 Nor can she. It is clear from a simple reading of the Amended Complaint that the allegations therein  
8 are the proper articulation of a legal and financial dispute, and do not in any way “go beyond all  
9 possible bounds of decency.” *Pestmaster*, 2013 WL 12147583, at \*3. It is also clear on its face that  
10 the alleged assertion of “the pressure placed on [Ms.] Richardson” to make successful cryptocurrency  
11 trades on Ms. Thomson’s behalf and the subsequent request for an accounting of cryptocurrency  
12 holdings are not “atrocious and utterly intolerable” conduct that “go[es] beyond all possible bounds  
13 of decency.” (Amended Counterclaim at 5:3-8); *Pestmaster*, 2013 WL 12147583, at \*3 (dismissing  
14 an IIED claim without leave to amend).

15 Ms. Richardson’s vague and false claims about Ms. Thomson’s alleged defamatory and  
16 illegal conduct towards individuals other than Ms. Richardson are not relevant to Ms. Richardson’s  
17 claims that Ms. Thomson caused emotional distress to *her*. Ms. Richardson cannot make out a claim  
18 of IIED through vague (and untrue) allegations of what Ms. Thomson allegedly did to other people.  
19 What Ms. Thomson purportedly did to other people is irrelevant and should be disregarded by the  
20 Court. In any event, Ms. Richardson “cannot maintain a separate cause of action for mental and  
21 emotional distress where the gravamen is defamation.” *Dworkin v. Hustler Mag., Inc.*, 668 F. Supp.  
22 1408, 1420 (C.D. Cal. 1987), *aff’d*, 867 F.2d 1188 (9th Cir. 1989). Thus, to the extent that Ms.  
23 Richardson’s claim of IIED is alleged to be caused by defamatory conduct, this claim is inactionable  
24 and must be dismissed. Therefore, Ms. Richardson has not and cannot state a claim for intentional  
25 infliction of emotional distress and her IIED claim against Ms. Thomson should be dismissed with  
26 prejudice.

**CONCLUSION**

Ms. Richardson's Amended Counterclaims against Ms. Thomson should be dismissed in its entirety with prejudice for failure to state a claim under Rule 12(b)(6).

Dated: February 16, 2024

**MCDERMOTT WILL & EMERY LLP**

By: /s/ Julian L. André  
JULIAN L. ANDRE

Attorneys for Plaintiff  
TAYLOR THOMSON

MCDERMOTT WILL & EMERY LLP  
ATTORNEYS AT LAW  
LOS ANGELES

**CERTIFICATE OF COMPLIANCE**

This certifies that Plaintiff Taylor Thomson's Memorandum of Points and Authorities in Support of Motion to Dismiss Defendant Ashley Richardson's Amended Counterclaims complies with the requirements of Local Rule 11-6, as amended by the Honorable Maame Ewusi-Mensah Frimpong's Civil Standing Order of November 2022 (available at <https://www.cacd.uscourts.gov/honorable-maame-ewusi-mensah-frimpong>). The Memorandum contains less than 10 pages and therefore does not include a Table of Authorities and a Table of Contents. The Memorandum uses Times New Roman twelve-point font for body text and ten-point font for footnotes.

Dated: February 16, 2024

*/s/ Julian André*

Julian André

McDERMOTT WILL & EMERY LLP  
ATTORNEYS AT LAW  
LOS ANGELES

**PROOF OF SERVICE**

I am a citizen of the United States and resident of the State of California. I am employed in Los Angeles, California. My business address is McDermott Will & Emery, LLP, 2049 Century Park East, Suite 3200, Los Angeles, CA 90067. I am over the age of eighteen years and not a party to this action.

On February 16, 2024, I served unredacted copies of the following document:

**PLAINTIFF TAYLOR THOMSON'S MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION TO DISMISS DEFENDANT ASHLEY RICHARDSON'S  
AMENDED COUNTERCLAIMS**

on the following party via Electronic Mail based on the written consent of Ms. Richardson:

Ashley Richardson  
25399 Markham Lane  
Salinas, CA 93908  
ashrichardson@mac.com

*Defendant in Pro Per*

on the following parties via the CM/ECF Notice system:

AnnaMarie A. Van Hoesen  
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515 Flower Street, Suite 3300  
Los Angeles, CA 90071

*Counsel for Defendants Persistence  
Technologies (BVI) PTE. Ltd. and  
Tushar Aggarwal*

Kayvan B. Sadeghi  
ksadeghi@jenner.com  
Adina Hemley-Bronstein  
AHemley-Bronstein@jenner.com  
1155 Avenue of the Americas  
New York, NY 10036

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on February 16, 2024 in Los Angeles, California.

/s/ Diksha Vadan  
Diksha Vadan